

**Hunts Point Recycling Corp., a Joint Venture of Mid Bronx Haulage, Inc. and Victory Sanitation, Ltd. and Local 813, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Case 2-CA-23211**

February 19, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On March 27, 1990, Administrative Law Judge Eleanor McDonald issued the attached decision. The Respondent filed exceptions and a supporting brief,<sup>1</sup> the Charging Party filed a brief in response to the exceptions, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The complaint alleged, and the judge found, that Mid Bronx Haulage, Inc. (Mid Bronx) and Victory Sanitation Ltd. (Victory) commenced a new type of work and different method of operation by opening a waste recycling and transport center at Hunts Point and that the Respondent violated Section 8(a)(5) and (1) by refusing to recognize the Union and by failing to apply the collective-bargaining agreement in effect at Mid Bronx and Victory to the Hunts Point employees. We disagree. For the reasons set forth below, we find that the General Counsel has failed to demonstrate that the Respondent has an obligation to recognize and bargain with the Union absent a showing of majority support among the employees at Hunts Point, and we dismiss the complaint.

The facts, as found by the judge or undisputed in the record, follow. Mid Bronx and Victory are commercial refuse collectors occupying separate facilities in Bronx, New York. Mid Bronx is owned in equal shares by its president, Arnold Sirico, its treasurer, Robert Sirico, and its secretary, Buchanan.<sup>2</sup> Victory is owned in equal shares by its president, Bizenza, and its secretary-treasurer, Squillante. No party contends that Mid Bronx and Victory are related entities.

<sup>1</sup>The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>2</sup>The Mid Bronx secretary is referred to in the record and briefs as both Robert Buchanan and Robert Buchman. We are satisfied that these references are to the same individual.

Both Mid Bronx and Victory are signatories to separately executed copies of an agreement with the Union covering drivers and helpers. The agreement states that it was "jointly negotiated by the Union with the Employers in the New York City area covered by this Agreement," and further provides that "an industry-wide unit of all employees covered by this Agreement . . . shall be appropriate [and] the parties concur that the Employers signatory hereto constitute a multi-employer group subject to the jurisdiction of the National Labor Relations Board."<sup>3</sup> Section 24(e) of this agreement provides as follows:

In the event new types of work or different methods of operation or new or other types of equipment are used that are not otherwise covered herein, the Union and the Employer shall meet to take up for settlement the wages to be paid for such work, methods of operation, or equipment.

Both Mid Bronx and Victory are also signatories to undated letters of agreement with the Union in which each of them, as "individual Employer[s], upon a lawful showing of representation status, agrees to recognize [the Union] for mechanics, mechanics' helpers and yardmen at all locations."

In June 1988,<sup>4</sup> the Sirico brothers, Squillante, Buchanan, and Bizenza (the partners) agreed to open a facility to sort and compact trash. The partners located the operation at Hunts Point, a few blocks from the Mid Bronx and Victory operations.<sup>5</sup> On hearing of the plans to open Hunts Point, the Union contacted both Mid Bronx and Victory in June to negotiate a wage rate for the not yet hired Hunts Point employees. Bizenza and Robert Sirico attended two meetings that summer with the Union, but no agreement was worked out. No representative of Hunts Point attended any other meetings, although the Union continued to request them.

The new facility commenced operations in October. Both Mid Bronx and Victory deliver refuse to Hunts Point for processing; so do other companies not alleged as related entities here. The partners hired a general manager, Luongo, and an equipment manager, Richards, for the Hunts Point facility. During the start-up period the partners spent considerable time at Hunts Point and were involved in all phases of its operation. Subsequent to the end of the startup phase Bizenza, Robert Sirico, and Buchanan were still involved to varying degrees in managing Hunts Point. As of the

<sup>3</sup>The agreement does not identify the multiemployer group by name or constituent members.

<sup>4</sup>Unless otherwise noted all subsequent dates will be in 1988.

<sup>5</sup>The judge found that some trash collectors like Mid Bronx and Victory had historically begun to sort and compact refuse on their own premises, to assign the work to unit employees, and to extend the Union contract to cover the work. The judge made no findings, and the record is silent, on the practice continued in the industry when, as here, two or more signatory employers open a facility at a separate site.

hearing date, about 11 employees were employed at the Hunts Point facility. Some of these employees operate machinery such as forklifts to unload and compact trash; others hand-sort recyclable objects from valueless refuse. Once the trash has been sorted and compacted, it is transported to landfills by independent truckers. One Mid Bronx employee went to work for Hunts Point when the facility opened and on one occasion a Hunts Point employee filled in for a Mid Bronx employee.

The judge found that the partners set the terms and conditions of employment for Hunts Point and hired its employees, except for the pickers; that the operations of Mid Bronx and Victory were functionally integrated with those of Hunts Point; that Mid Bronx, Victory, and Hunts Point were commonly owned and managed; and that therefore Mid Bronx, Victory, and Hunts Point constitute a single employer.<sup>6</sup> Further, the judge found that the Hunts Point employees have sufficient contact and similarity of job skills and duties with employees of Mid Bronx and Victory to find a community of interest among the employees at the three locations. Thus, the judge reasoned, the Hunts Point employees are an accretion to “the employees at Mid Bronx and Victory,” and by extension to the industry-wide bargaining unit, under the terms of the agreement quoted above. Thus, having found accretion, the judge concluded that the Respondent was obligated to apply the agreement to Hunts Point and violated Section 8(a)(5) by failing to do so. We disagree that the Hunts Point employees are an accretion to either an “industry-wide” multiemployer unit or to a unit of Mid Bronx and Victory employees.<sup>7</sup>

1. *Accretion to the multiemployer unit.* The Board will find a multiemployer unit appropriate when the employers involved have evinced a clear intent to participate in multiemployer bargaining and to be bound by the actions of the bargaining agent. *Tampa Bay Glazing Contractors Assn.*, 228 NLRB 360 (1977). On

<sup>6</sup>The judge also found that business relations between Mid Bronx and Victory and Hunts Point were not at arm’s length. The judge examined dumping vouchers to conclude that the partners had used the vouchers to transfer funds to Hunts Point and that the amounts charged Mid Bronx and Victory to dump at Hunts Point had no relation to actual services rendered. We reject these findings. We note that no party advanced such an interpretation of the facts; further, we do not find the judge’s inferences justified by the evidence.

At the hearing, the General Counsel argued that Hunts Point was a “joint venture” of Mid Bronx and Victory and that Sirico and Bizenza held themselves out to the Union as joint employers with regard to Hunts Point. The judge did not pass on these contentions. As the General Counsel has not excepted to the judge’s failure to pass on them, we limit our comments to noting that, insofar as the General Counsel was arguing that principals of Mid Bronx and Victory were joint employers of the employees at Hunts Point, single employer status and joint employer status are not interchangeable concepts. See, e.g., *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1121–1123 (6th Cir. 1982); *Aspen Leasing Systems*, 271 NLRB 1536 fn. 1 (1984).

<sup>7</sup>The Board will find that a new employee group has accreted to an existing bargaining unit, obligating the employer to bargain with respect to the new group without an election if the new group shares a sufficient community of interest with the employees in the existing unit and if the new group does not constitute a separate unit. *Save Mart of Modesto*, 293 NLRB 1190 (1989).

careful review of the record, we do not adopt the judge’s inferences that either Mid Bronx or Victory, or a combination of the two, is a member of a multiemployer bargaining group or that such a multiemployer unit exists and would be appropriate. Other than the conclusory testimony of Union Agent Lieber that Mid Bronx and Victory were members of a multiemployer group the name of which Lieber “believe[d]” was the Queens Trade Waste Association and the signatures of Robert Sirico and Bizenza on contracts and letters of assent not naming that organization, the record contains no actual evidence regarding the identity, history, or status as a bargaining agent of such a group, or, more importantly, of any explicit indication by either Mid Bronx or Victory of an intent to be bound by that group’s actions in negotiations. Such evidence falls short of a demonstration of an unequivocal intent to be bound by the actions of a bargaining agent which is required by the Board to bind an employer to multiemployer bargaining, and by extension, to find that the employees of that employer belong to a multiemployer unit. *Phoenix Air Conditioning*, 231 NLRB 341, 342 (1977); *Greenhoot, Inc.*, 205 NLRB 250, 251 (1973). Finally, even if Mid Bronx and Victory have in fact consented to be bound by such bargaining, under the circumstances here there is insufficient evidence to find that an “industry-wide” unit actually exists and functions, much less that the Mid Bronx and Victory employees have merged into that unit. Cf. *Etna Equipment & Supply Co.*, 236 NLRB 1578 (1978).

Further, we do not find that the language of those agreements establishes either the requisite intent to be bound or a contractual obligation to recognize the Union at Hunts Point absent a showing of majority support at that facility. It is well settled that, taken alone, an employer’s adoption of a multiemployer agreement, even when the agreement contains a so-called “one-unit” clause like that quoted above, is not sufficient to establish that it has consented to become a part of a multiemployer unit. See *Schaetzel Trucking*, 250 NLRB 321, 323 (1980), and cases cited therein. Further, the language of the agreements themselves does not, and lawfully cannot, require Mid Bronx or Victory to recognize the Union as the representative of employees *at a separate location*, absent accretion or a showing of majority support. See *Kroger Co.*, 219 NLRB 388 (1975). As noted above, the record contains no evidence that the Union ever made such a showing vis-a-vis the Hunts Point employees. Thus, we disagree with the judge’s finding that an industrywide unit is appropriate and that the Mid Bronx and Victory employees are a part of it.

2. *Accretion to a unit of Mid Bronx and Victory employees.* We also reject the judge’s findings that the Hunts Point employees share a community of interest with the Mid Bronx and Victory employees, sufficient

to establish that the Hunts Point employees are an accretion to a unit of Mid Bronx and Victory employees. Rather, we find that regardless of any similarities or differences between the job skills, duties, and terms and conditions of employment of the Mid Bronx and Victory employees, these two groups cannot and do not constitute an appropriate unit for the simple reason that they have different employers. As noted above, there is no contention here that Mid Bronx and Victory are related entities or that the two of them constitute a single employer. Moreover, the record contains no evidence that either Mid Bronx or Victory has consented to be bound by multiemployer bargaining with the other; absent such a showing, the Board will not find a unit combining the employees of different employers appropriate. *Greenhoot*, supra.

This same consideration also precludes a finding that a community of interest exists among the Hunts Point, Mid Bronx, and Victory employees. Simply put, the Hunts Point employees are employed by a different entity than either the Mid Bronx or the Victory employees. Thus, in our view, the judge erred in finding that the three entities constitute a single employer. The Board finds single employer status when “two or more nominally separate business entities may properly be considered sufficiently integrated to warrant their unitary treatment.” *NLRB v. Browning-Ferris Industries*, supra, 691 F.2d 1117, 1121 (emphasis and footnote omitted). In analyzing the degree of integration, the Board looks at several factors: (1) functional integration of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. *Radio Union v. Broadcast Service of Mobile*, 380 U.S. 255, 256 (1965). The judge found that each of these factors demonstrate that Mid Bronx, Victory, and Hunts Point are a unitary employer. We reject the judge’s findings in view of the lack of evidence that Mid Bronx and Victory are anything but separate corporate entities with no common ownership or management, no centralized control of labor relations, and operations which are not integrated. The mere fact that some of the principals of two unrelated employers combine to open and operate a third separately incorporated facility is insufficient to, in effect, bootstrap a finding of single employer status for the *three* entities.<sup>8</sup> Therefore, we do not find that the Hunts Point, Mid Bronx, and Victory employees have even the requisite community of interest for a finding that they constitute an appropriate unit, much less the stronger showing of common interests required for a finding of accretion. *Save Mart of Modesto*, supra, fn. 5. Further, as we have found that Mid Bronx, Victory, and Hunts Point are not a single em-

ployer, we conclude that the bargaining obligations of Mid Bronx and Victory have no application to Hunts Point. *Western Union Corp.*, 224 NLRB 274, 274 (1976), affd. 571 F.2d 665 (D.C. Cir. 1978). Thus, we shall dismiss the complaint in its entirety.<sup>9</sup>

## ORDER

The complaint is dismissed.

<sup>9</sup>Because of our disposition of the allegations here, we need not reach the issues of joinder and service with respect to Mid Bronx and Victory raised by the Respondent.

*Judy Minette Sandler, Esq.*, for the General Counsel.

*Sanford E. Pollack, Esq.* and *Steven B. Horowitz, Esq.* (*Horowitz & Pollack, P.C.*), of South Orange, New Jersey, for Respondent.

*Stuart Bochner, Esq.*, of New York, New York, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in New York, New York, on June 26 and 27 and July 6, 1989. The complaint alleges that Respondent, in violation of Section 8(a)(1) and (5) of the Act, refused to bargain with the Union and refused to apply the collective-bargaining agreement to the employees at Respondent’s Hunts Point facility. Respondent denies that the agreement was applicable to those employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent in September 1989, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

##### The Business of Respondents and Their Alleged Status as a Single Integrated Enterprise

Respondent Hunts Point, a New York corporation with its principal office in Bronx, New York, is engaged in recycling and transporting refuse and annually purchases goods valued in excess of \$50,000 from outside the State of New York. Mid Bronx Hauling, Inc. is a domestic corporation with an office in Bronx, New York, where it is engaged in collecting refuse from commercial customers. Victory Sanitation, Ltd. is also a domestic corporation with an office in Bronx, New York, where it is engaged in collecting refuse from commercial customers. The complaint alleges that Mid Bronx and Victory jointly established Hunts Point to provide recycling and transportation of refuse collected by both Mid Bronx and Victory and that Hunts Point is an affiliated enterprise of Mid Bronx and Victory. The complaint alleges that Mid Bronx and Victory jointly own, manage, and supervise Hunts Point, jointly formulate and administer labor policy for Hunts Point employees, jointly interchange personnel, and jointly hold themselves out as a single enterprise. The complaint concludes that Hunts Point, Mid Bronx, and Victory are a

<sup>8</sup>Cf. *Graphic Services Corp.*, 224 NLRB 17, 23–24 (1976) (contention that three entities are a single employer rejected where one entity is not related to other two by common management, ownership, control, or operations).

single integrated employer engaged in commerce. Respondent Hunts Point denies the allegations relating to joint establishment and joint control of Hunts Point.<sup>1</sup>

The relationships among the individuals who own and direct the affairs of Hunts Point, Mid Bronx, and Victory are most easily set forth in table form:<sup>2</sup>

	<i>Owners/Officers</i>
Mid Bronx	Robert Sirico—Treasurer Arnold Sirico—President Robert Buchanan—Secretary <sup>3</sup>
Victory	Richard Bizenza—President Nunzio Squillante—Secretary-Treasurer
Hunts Point	Robert Sirico—Treasurer Arnold Sirico—President Robert Buchanan—Vice President Richard Bizenza—Secretary Nunzio Squillante—Vice President

The testimony of all the witnesses taken together and evaluated for reliability shows the following facts.<sup>4</sup> All three corporations involved in this proceeding are located in the Hunts Point section of Bronx, New York. They are within walking distance of each other. Both Mid Bronx and Victory belong to an employer association called the Queens County Trade Waste Association.<sup>5</sup> The Association has negotiated for many years with the Union, and Mid Bronx and Victory have signed the contracts negotiated by the Association. In addition to representing employees employed by commercial refuse collectors, the Union represents employees at 25 transfer stations.<sup>6</sup> A transfer station is a place where refuse collectors dump their garbage in order to sort out and remove any valuable waste, such as paper or certain metals, for resale and in order to compact the rest of the garbage for removal to a dump. Historically, transfer stations arose when garbage companies began emptying their trucks on their own property in order to sort and compact it.<sup>7</sup> This was economically advantageous because at a garbage dump the charge for dumping is computed not by weight but by the cubic yard. Usually, an employee of the garbage company represented by Local 813 was assigned to run the bulldozer used to handle

the garbage at the transfer station and the collective-bargaining agreement was applied to him.

In June 1988 Bernard Adelstein, secretary-treasurer of the Union wrote to Bizenza at Victory and to Robert Sirico at Mid Bronx stating the Union's understanding that "your company is ready to implement a new operation, i.e., a transfer station" and requesting a meeting to negotiate a wage rate for the work. Both Bizenza and Robert Sirico attended meetings at the Union's offices on June 22 and September 27, 1988. The Union was represented by various individuals including Adelstein and Michael Lieber, an attorney who is a legal and administrative coordinator for the Union. Sirico and Bizenza confirmed that they were joining forces to open a transfer station to reduce their costs of dumping. They stated their intention to use employees of Mid Bronx and Victory at the new transfer station. The men present at the meetings negotiated extensively concerning rates of pay and benefits to be offered to the prospective employees. Specific rates were discussed for the machine operators and for the pickers and sorters.<sup>8</sup> A third meeting was agreed on but Bizenza and Sirico did not attend. Several further meetings were scheduled only to be canceled by Bizenza and Sirico. By December 1988, Hunts Point was open for business. It was clear by mid-December that Bizenza and Sirico refused to bargain with the Union concerning the Hunts Point employees.

The evidence shows that Robert Sirico runs the operations at Mid Bronx. He oversees the work of the office manager and the general manager. He runs the financial affairs of the corporation. His brother, Arnold Sirico, takes care of the mechanical equipment of Mid Bronx, and his brother-in-law, Robert Buchanan, is in charge of customer relations and revenue collections. The three partners hired the general manager at Mid Bronx, and they set the Company's labor policies. Richard Bizenza runs the operations of Victory and the other companies in which he has an interest from his office at the Victory location. Bizenza hired all the employees at Victory. He and his partner, Nunzio Squillante, make all decisions relating to Victory and these decisions are carried out by the general manager.

Both Mid Bronx and Victory collect garbage in trucks manned by a driver and a helper; these employees are all represented by Local 813.

The record establishes that the five owners of Hunts Point make all the decisions relating to that Company including the setting of its labor policy. They jointly determine what the dumping charges shall be, they interviewed and hired all the employees except for the unskilled, high turnover pickers and sorters, and they set all the wages and benefits. Decisions whether to discharge an employee are cleared by the five owners. When Hunts Point was being put into operation and the facility was being operated on a trial basis, all five owners were present for lengthy periods of time, learning the operation and actually working the equipment. Bizenza instructed the pickers in their duties to reinforce the instructions given by Operations Manager John Luongo. According to Robert Sirico, Bizenza makes sure that Hunts Point is running properly. Robert Sirico does the paperwork and bookkeeping for Hunts Point every week. In addition, Buchanan

<sup>1</sup> Mid Bronx and Victory were not separately served here.

<sup>2</sup> Mid Bronx was incorporated in 1971. Victory was incorporated in 1980. Hunts Point was incorporated on July 1, 1988.

<sup>3</sup> Robert and Arnold Sirico are brothers. Buchanan is their brother-in-law.

<sup>4</sup> Robert Sirico testified about his part in the operations of Mid Bronx and Hunts Point. His answers tended to be evasive and often did not make sense. He could not recall many facts which a businessman would normally know concerning his business dealings. I shall not rely on his testimony when it is contradicted by other more reliable evidence. Richard Bizenza testified about his part in the operations of Victory and Hunts Point. I observed that he was evasive and uncooperative in responding to questions and that he could not recall many things that reasonably he would be expected to remember. I shall not rely on his testimony where it is contradicted by other more reliable evidence. I find that the other witnesses were generally credible.

<sup>5</sup> The record does not disclose the number of employees in the multiemployer unit. Mid Bronx employs 12 to 14 unit members; Victory employs about 8 unit members.

<sup>6</sup> Other unions represent employees of other commercial garbage companies and other transfer stations.

<sup>7</sup> Certain transfer stations are referred to as recycling facilities because they handle garbage that is more valuable than the usual mix of commercial refuse.

<sup>8</sup> The machine operators would operate a payload, a baler, and a forklift. The pickers and sorters, unskilled workers, would sort through the garbage before it was compacted in order to remove resaleable material.

has been doing some paperwork.<sup>9</sup> If Luongo has a problem at Hunts Point that he cannot handle, for instance with a landfill, then Bizenza will make a telephone call from his office at Victory in order to solve the problem. Before he was placed on disability, Arnold Sirico worked half a day at Hunts Point and half a day at Mid Bronx taking care of maintenance and supplies.<sup>10</sup> The five owners of Hunts Point meet weekly to make determinations concerning the business, including matters relating to labor relations.

A former employee of Mid Bronx is now employed by Hunts Point. Joseph Casucci testified that Robert Sirico hired him to work at Mid Bronx as a garbage truck helper.<sup>11</sup> Casucci needed a job, but he did not want to remain on a garbage truck. Sirico told him that in a few weeks, a new recycling business would be opening and that there would be a job for Joseph Casucci and his brother, Frankie. Sirico also told him that when he went to the new job at Hunts Point his membership in Local 813 would cease. Sirico said they were having trouble with Local 813 and they were trying to bring in a different union. On the first day that Casucci began working at Hunts Point, Robert Sirico instructed him to go over to the transfer station with a truckload of garbage. He dumped the garbage at Hunts Point and then Joseph Casucci, his brother Frankie, and Arnold Sirico ran the equipment at Hunts Point. At the time he gave his testimony, Joseph Casucci stated that he was loading dock manager at Hunts Point. He runs a forklift that takes baled cubes of garbage from the baling machine and he stacks the cubes and later loads them on a trailer which takes them to a dumping site.<sup>12</sup> Joseph Casucci also tells the pickers to keep the floors and ramps clear of garbage; when he is not driving the forklift, he, himself, is helping to clean the ramps and the floors. Casucci signed a management contract with Hunts Point, but there is no credible evidence that he has ever exercised any supervisory authority at Hunts Point.

The credible evidence shows that no one works in the Hunts Point office. John Luongo, the operations manager, spends his time on the plant floor, helping and directing the men. About eight or nine employees work at Hunts Point. On one occasion, when Mid Bronx was short a man for the night, the supervisor from Mid Bronx borrowed a man from Hunts Point to work at Mid Bronx.

Joseph Casucci testified that about 34 or 36 truckloads of garbage are dumped each day at Hunts Point. Of these, 20 are from Mid Bronx and Victory. Mid Bronx dumps all of its garbage at Hunts Point; of the \$245,000 monthly dumping fees typically received by Hunts Point, \$100,000 is paid by Mid Bronx. Victory also dumps all of its garbage at Hunts Point; in a typical month, Victory pays approximately \$40,000 in dumping fees to Hunts Point.

The evidence shows that the five owners of Hunts Point invested some unspecified sums of money to begin the operation. In addition, when Hunts Point was in its first few months of operation, money was transferred from Mid Bronx

and Victory to Hunts Point through the device of prepaid dump tickets. Each week, both Mid Bronx and Victory paid identical sums to Hunts Point and they were given dump tickets which purportedly permitted the two companies to dump certain amounts of garbage at Hunts Point. From the financial records introduced here, it seems that the amounts paid for the dump tickets had no relation to the garbage actually dumped. Indeed, Robert Sirico testified that the device was a way of producing capital for Hunts Point; the owners did not have enough money for the "enormous" costs of starting Hunts Point and capital was thus transferred to Hunts Point from Mid Bronx and Victory.

The Board considers nominally separate business entities to be a single employer where four criteria are present: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership. *Radio Union Local 1264 v. Broadcast Service*, 380 U.S. 255 (1965). The facts in the instant case show interrelation of operations among Hunts Point, Mid Bronx, and Victory: Garbage is picked up by the trucks owned by Mid Bronx and Victory and taken to Hunts Point where it is sorted and baled. The testimony shows that this method is economically advantageous to both Mid Bronx and Victory in that it enables them to cut the costs of dumping in other locations. Most of the garbage handled by Hunts Point is picked up by Mid Bronx and Victory. The same individuals who process paperwork at Mid Bronx, Robert Sirico and Buchanan, do the paperwork for Hunts Point. An employee of Mid Bronx was brought over at the startup of Hunts Point, and an employee of Hunts Point was borrowed to help out at Mid Bronx. The same person, Arnold Sirico, takes care of the mechanical and supply operations at Hunts Point and Mid Bronx. The facts show that there is centralized control of labor relations: The two owners of Victory and the three owners of Mid Bronx make all decisions about hiring, firing, wages, and labor policy for their respective companies. These same five owners make all similar decisions concerning hiring, firing, wages, and labor policy for Hunts Point. Robert Sirico from Mid Bronx and Richard Bizenza from Victory met with the Union twice to negotiate concerning wages and other conditions. The facts show common management: The same five individuals who run Mid Bronx and Victory, making all decisions regarding the financial and day-to-day operations of their respective companies, are the five owners who meet together once a week in order to make all decisions relating to Hunts Point. Finally, the facts show common ownership: The three owners of Mid Bronx and the two owners of Victory are the five owners of Hunts Point. Both Mid Bronx and Victory contributed large sums of capital to the startup costs of Hunts Point. See also *Savage Gateway Supermarket*, 286 NLRB 180 (1987); *Soule Glass Co.*, 246 NLRB 792 (1979).

I find that Hunts Point Recycling Corp., Mid Bronx Haulage, Inc., and Victory Sanitation, Ltd. constitute a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. LABOR ORGANIZATION

There is no dispute that, and I find, the Union is now and has been at all times material a labor organization within the meaning of Section 2(5) of the Act.

<sup>9</sup> Sirico testified that all the paperwork is done at home. Because both Sirico and Buchanan have an office at Mid Bronx, I view this testimony as incredible and I find that the Hunts Point paperwork is done at Mid Bronx.

<sup>10</sup> The record does not disclose the duration of the disability leave nor any arrangements made in Arnold Sirico's absence.

<sup>11</sup> Casucci has been a member of Local 813 for 9 years.

<sup>12</sup> The baled garbage from Hunts Point is taken to dumps by outside trailers which are not owned or operated by Hunts Point.

### III. ALLEGED UNFAIR LABOR PRACTICES

General Counsel contends that the employees of Hunts Point constitute an accretion to the unit. In determining whether accretion is appropriate, the Board considers the community of interests of the employees. Where there is "more than one operation of a single employer, the following factors are particularly relevant; the bargaining history; the functional integration of operations; the differences in the types of work and the skills of employees; the extent of centralization of management and supervision, particularly in regard to labor relations, hiring, discipline, and control of day-to-day operations; and the extent of interchange and contact between the groups of employees." *Peter Kiewit Sons' Co.*, 231 NLRB 76 (1977), *affd.* 595 F.2d 844 (D.C. Cir. 1979).

As stated above, the history of the transfer stations shows that when they were established by refuse collection companies, the Local 813 contract was extended to cover the transfer station employees. The locations of Mid Bronx, Victory, and Hunts Point are all within walking distance of each other. Both Mid Bronx and Victory dump all of their garbage at Hunts Point and there is an integrated processing of garbage from pickup by Mid Bronx and Victory through dumping, sorting, and baling at Hunts Point. As shown above, there is centralized control of operations, finances, and labor relations as it relates to Hunts Point; the managers and owners of the single employer control hiring, firing, wages, and benefits, make operational decisions, and direct the finances of Hunts Point. The employees of Hunts Point have daily contact with the employees of Mid Bronx and Victory when the drivers and helpers of the last two companies deliver garbage to Hunts Point for sorting and processing. The employees of Mid Bronx and Victory present their dumping tickets to the employees of Hunts Point. An employee of Mid Bronx was hired to work at Hunts Point, and a Hunts Point employee was borrowed to fill in for an absent employee of Mid Bronx.

The last determination to be made relates to the types of work and the skills of employees of the single employer. As stated above, both Mid Bronx and Victory employ drivers and helpers. The record shows that drivers drive garbage trucks; the trucks require either manual loading of garbage into the rear of the truck, or a lever on the truck activates a mechanism which lifts a container of garbage, dumps the garbage into the truck, and then replaces the empty container on the ground. Helpers assist the drivers in loading the garbage by either method. The eight or nine employees of Hunts Point consist of machine operators and a number of pickers and sorters who go through the garbage to extract recyclable materials. There is one payload operator who works the machine that lifts the garbage off the ground with a bucket and dumps the garbage into the baling machine. During the testing period for Hunts Point, Richard Bizenza worked the payload operator; he testified that he had driven a garbage truck for 13 years and this was apparently his background for learning to operate the payload operator. There was no evidence as to the experience of the man who is currently running the payload operator at Hunts Point. The record shows that Hunts Point employs one worker to run the baling machine; this machine receives loose garbage and then puts it out in the form of a compact cube. The worker running this machine controls it by means of button controls. Finally, Hunts Point employs two forklift operators; these men operate the forklifts that take baled gar-

bage from the payload operator, store it for pickup, and then load it onto the trailer trucks that come to remove it. The record shows that forklift operators assist pickers and loaders on occasion at Hunts Point. It takes about 1 day to learn to operate a forklift if one has the ability to drive. The employees of the three companies all operate machines that handle, or they handle directly, garbage from commercial customers. They are able to fill in for each other when required and, in some cases, to learn each others' jobs in a short time. On the basis of the foregoing summary, I find that there is a sufficient similarity of skills and types of work among the employees of the single employer such that, in addition to the considerations enumerated above, the employees of Hunts Point constitute an accretion to the existing unit.

The collective-bargaining agreement contains a recognition clause that provides:

The Employers recognize the Union as the sole and exclusive bargaining representative of all Chauffeurs and Helpers at all locations of the Employer . . . with respect to wages, hours and other working conditions. The area of work includes, but not by way of limitation, loading and/or removing garbage, rubbish, cinders, ashes, waste materials, building debris and similar products. The Employers agree that for the purpose of any proceeding before any Labor Relations Board and in order to effectuate the provisions of this Agreement, an industry-wide unit of all employees covered by this Agreement rather than an individual Employer unit shall be appropriate. This Agreement having, as in the past, been jointly negotiated by the Union with Employers in the New York City area covered by this Agreement, the parties concur that the Employers signatory hereto constitute a multi-employer group subject to the jurisdiction of the National Labor Relations Board.

Section 24(e) of the collective-bargaining agreement provides:

In the event new types of work or different methods of operation or new or other types of equipment are required or used that are not otherwise covered herein, the Union and the Employer shall meet to take up for settlement the wages to be paid for such work, methods of operation, or equipment. Upon agreement of said rates, such rates shall be retroactive to the date of notification by the Union regarding the new type of work begun or the new type of equipment installed. In no event shall such rates be below the minimum of the rates set forth herein.

Having found that Hunts Point constitutes a single employer with Mid Bronx and Victory and having found that the employees of Hunts Point are properly accreted to the employees of Mid Bronx and Victory, I further find, in accordance with the collective-bargaining agreement, that the employees of Hunts Point are an accretion to the industry-wide bargaining unit.

I find that the appropriate collective-bargaining unit is:

All chauffeurs and helpers at all locations of members of the Queens County Trade Waste Association and of the employers who have authorized the Association to

bargain on their behalf, including chauffeurs, helpers, machine operators, pickers and sorters of Hunts Point, Mid Bronx and Victory, but excluding office clerical employees, guards and supervisors as defined in the Act.

Hunts Point has refused to meet with the Union since December 1988, to discuss wages and benefits as requested by the Union pursuant to section 24(e) of the collective-bargaining agreement. Since the Hunts Point employees are part of the unit represented by the Union, the refusal to recognize the Union and apply the terms of the collective-bargaining agreement violated Section 8(a)(5) and (1) of the Act. *Hahn Motors*, 283 NLRB 901 (1987).<sup>13</sup>

#### CONCLUSIONS OF LAW

1. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

<sup>13</sup> I have read the arbitration award cited by Respondent: it is irrelevant for many reasons, among them the fact that the arbitrator viewed the case as a jurisdictional dispute between two competing unions which he lacked the authority to decide.

All chauffeurs and helpers at all locations of members of the Queens County Trade Waste Association and of the employers who have authorized the Association to bargain on their behalf, including chauffeurs, helpers, machine operators, pickers and sorters of Hunts Point Recycling Corp., Mid Bronx Haulage, Inc. and Victory Sanitation, Ltd., but excluding office clerical employees, guards and supervisors as defined in the Act.

2. At all times material, the Union has been the exclusive representative of all employees within the appropriate unit described above for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. By refusing to recognize the Union and refusing to apply the collective-bargaining agreement to its Hunts Point employees, Respondent Hunts Point Recycling Corp. violated Section 8(a)(5) and (1) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]